

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM MCNAE and RONDA MCNAE,

Plaintiffs,

v.

ARAG INSURANCE COMPANY,

Defendant.

Case No. 2:24-cv-00211-TL

DECLARATION OF ANN COSIMANO
IN SUPPORT OF ARAG INSURANCE
COMPANY'S MOTION FOR PARTIAL
SUMMARY JUDGMENT (ERISA
PREEMPTION)

I, Ann Cosimano, under penalty of perjury under the laws of the United States of America, declare that the following statements are true and correct:

1. I am General Counsel for ARAG Insurance Company ("ARAG"). I am of legal age, am competent to testify, and have personal knowledge of the matters herein.

2. Attached hereto as **Exhibit 1** is a true and correct copy of ARAG Policy No. 10377, issued to the policyholder Microsoft Corporation ("Microsoft") for the policy period January 1, 2022 to December 31, 2022 ("Microsoft Policy"). ARAG produced the Microsoft Policy in this litigation as ARAG002542.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the Certificate of Insurance for the Microsoft Corporation Legal Expense Insurance Plan for the policy period

1 January 1, 2022 to December 31, 2022 (“Microsoft Certificate”). ARAG produced the
2 Microsoft Certificate in this litigation as ARAG002934.

3 4. On July 14, 2022, Michael J. Fitzgerald (“Mr. Fitzgerald”) filed a civil action,
4 No. 1:22-cv-22171, in the United States District Court for the Southern District of Florida
5 (“Underlying Federal Action”).

6 5. In connection with being named as defendant in the Underlying Federal Action,
7 Ronda McNae made a claim under the Microsoft Policy’s “Defense of Civil Damages Claims”
8 benefit on July 18, 2022. Subject to the terms and conditions of the Microsoft Policy, ARAG
9 began providing benefits to Ronda McNae under the Microsoft Policy in connection with the
10 Underlying Federal Action.

11 6. ARAG has agreed, subject to written reservations of rights, to pay the costs of
12 eligible legal services for certain defense counsel, chosen by Ronda McNae from among
13 ARAG’s Network Attorneys, to defend Ronda McNae in the Underlying Federal Action.

14 7. In connection with being named as a defendant in the Underlying Federal Action
15 in December 2022, William McNae made a claim under the Microsoft Policy’s “Defense of
16 Civil Damages Claims” benefit. Subject to the terms and conditions of the Microsoft Policy,
17 ARAG began providing benefits to William McNae under the Microsoft Policy in connection
18 with the Underlying Federal Action.

19 8. ARAG paid the costs of eligible legal services for certain defense counsel,
20 chosen by William McNae, to defend William McNae in the Underlying Federal Action through
21 his dismissal from the same.

22 9. Attached hereto as **Exhibit 3** is a true and correct copy of ARAG Policy No.
23 10014-006, issued to the policyholder UltimateAdvisor Conversion Plan for the policy period
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1 January 1, 2023 to December 31, 2023 (“Conversion Policy”). ARAG produced the Conversion
2 Policy in this litigation as ARAG001525.

3 10. Attached hereto as **Exhibit 4** is a true and correct copy of the Certificate of
4 Insurance for the UltimateAdvisor Conversion Plan Legal Expense Insurance Plan for the
5 policy period January 1, 2023 to December 31, 2023 (“Conversion Certificate”). ARAG
6 produced the Conversion Certificate in this litigation as ARAG001662.

7 11. In connection with his separation from employment at Microsoft, William
8 McNae purchased new coverage from ARAG—this time not a part of Microsoft’s group
9 policy—to address future “insured events” as defined in said new coverage, namely the
10 Conversion Policy and the Conversion Certificate. William McNae’s coverage under the
11 Conversion Policy and Conversion Certificate became effective on October 1, 2023.

12 12. On November 2, 2023, Mr. Fitzgerald filed a civil action against William
13 McNae, No. 2023-025855-CA-01, in the Circuit Court of the Eleventh Judicial Circuit In and
14 For Miami-Dade County, Florida (“Underlying State Action”).

15 13. In connection with the Underlying State Action, William McNae made a claim
16 under the Conversion Policy’s “Defense of Civil Damages Claims” benefit on about November
17 8, 2023. ARAG conducted an investigation of the matter and then, subject to the terms and
18 conditions of the Conversion Policy, began providing benefits to William McNae under the
19 Conversion Policy in connection with the Underlying State Action.

20 14. ARAG has agreed, subject to written reservations of rights and the terms and
21 conditions of the Conversion Policy, to pay the costs of eligible legal services for certain
22 defense counsel, chosen by William McNae from among ARAG’s Network Attorneys, to
23 defend William McNae in the Underlying State Action.

1 15. In 2022 and prior years during which ARAG provided the prepaid legal services
2 that Microsoft made available as part of its employee benefits package, the two companies
3 worked closely to tailor ARAG's benefits, customer service metrics, and promotional
4 communications to Microsoft's requirements.

5 16. Microsoft and ARAG had a monthly telephonic status meeting, as well as an
6 annual stewardship meeting, generally held in-person at Microsoft's offices in the second
7 quarter, to discuss ARAG's performance during the prior policy year, any major changes in
8 participation, and Microsoft's plan design preferences for the renewal policy—including
9 analysis of any industry, economic, or societal developments that might affect Microsoft
10 employees' future needs for varying types of legal services.

11 17. In the years that it was offered, ARAG's coverage was the sole option for
12 prepaid legal services that Microsoft offered to its employees as part of a benefits package.
13 Microsoft selected ARAG as its provider following a rigorous and competitive Request for
14 Proposal ("RFP") process that Microsoft conducted in 2009.

15 18. In 2023, Microsoft issued a new RFP for prepaid legal services to be offered as
16 part of its employee benefits package. ARAG submitted a proposal, which entailed providing
17 copious information to Microsoft for evaluation, presenting to a selection committee, and
18 participating in a finalist meeting. As previously, only a single company would be chosen to
19 offer the prepaid legal services included in Microsoft's benefit package. Microsoft selected a
20 competitor of ARAG to provide the prepaid legal services benefit going forward and ARAG's
21 inclusion in Microsoft's employee benefits program ended on December 31, 2023.

22 19. Attached hereto as **Exhibit 5** is a true and correct copy of an ARAG business
23 record produced in this litigation as ARAG009016, consisting of an email chain between
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1 ARAG employees and Microsoft employees dated July 27, 2021. This document was generated
2 in the regular course of ARAG's business and maintained on ARAG's email server.

3 20. Attached hereto as **Exhibit 6** is a true and correct copy of an ARAG business
4 record produced in this litigation as ARAG008871, consisting of an email chain between
5 ARAG employees and Microsoft employees dated August 12, 2021. This document was
6 generated in the regular course of ARAG's business and maintained on ARAG's email server.
7 Exhibit 6 contains redactions pursuant to LR 5(g)(1)(B) to minimize filing under seal.

8 21. Attached hereto as **Exhibit 7** is a true and correct copy of an ARAG business
9 record produced in this litigation as ARAG008930, consisting of an email chain between
10 ARAG employees and Microsoft employees dated August 24, 2017. This document was
11 generated in the regular course of ARAG's business and maintained on ARAG's email server.

12 22. Attached hereto as **Exhibit 8** is a true and correct copy of an ARAG business
13 record produced in this litigation as ARAG009437 and ARAG009438, consisting of an email
14 dated November 2, 2017 and its attachment. This document was generated in the regular course
15 of ARAG's business and maintained on ARAG's email server.

16 23. Attached hereto as **Exhibit 9** is a true and correct copy of an ARAG business
17 record produced in this litigation as ARAG010610, consisting of an email between ARAG
18 employees and Microsoft employees dated May 13, 2016. This document was generated in the
19 regular course of ARAG's business and maintained on ARAG's email server. Exhibit 9 contains
20 redactions pursuant to LR 5(g)(1)(B) to minimize filing under seal.

21 24. Attached hereto as **Exhibit 10** is a true and correct copy of an ARAG business
22 record produced in this litigation as ARAG009134, ARAG009135, and ARAG009137,
23 consisting of an email chain between ARAG employees and Microsoft employees dated
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1 November 10, 2021 and its two attachments. This document was generated in the regular course
2 of ARAG's business and maintained on ARAG's email server.

3 25. Attached hereto as **Exhibit 11** is a true and correct copy of an ARAG business
4 record produced in this litigation as ARAG010636, consisting of an email chain between
5 ARAG employees and Microsoft employees dated August 3, 2017. This document was
6 generated in the regular course of ARAG's business and maintained on ARAG's email server.

7 26. Attached hereto as **Exhibit 12** is a true and correct copy of an ARAG business
8 record produced in this litigation as ARAG010632, consisting of an email chain between
9 ARAG employees and Microsoft employees dated May 14, 2020. This document was generated
10 in the regular course of ARAG's business and maintained on ARAG's email server. Exhibit 12
11 contains redactions pursuant to LR 5(g)(1)(B) to minimize filing under seal.

12 27. Attached hereto as **Exhibit 13** is a true and correct copy of an ARAG business
13 record produced in this litigation as ARAG009139, consisting of a Microsoft presentation titled
14 "Talk Benefits To Me." This document was generated in the regular course of ARAG's business
15 and maintained among ARAG's electronic records in the ordinary course. Exhibit 13 contains
16 redactions pursuant to LR 5(g)(1)(B) to minimize filing under seal.

17 28. Attached hereto as **Exhibit 14** is a true and correct copy of an ARAG business
18 record produced in this litigation as ARAG009310, consisting of promotional material for
19 distribution to Microsoft employees. This document was generated in the regular course of
20 ARAG's business and maintained among ARAG's electronic records in the ordinary course.

21 29. Attached hereto as **Exhibit 15** is a true and correct copy of an ARAG business
22 record produced in this litigation as ARAG009892 and ARAG009893, consisting of an email
23 chain between ARAG employees and Microsoft employees dated September 14, 2021 and its
24 attachment. This document was generated in the regular course of ARAG's business and

1 maintained on ARAG's email server. Exhibit 15 contains redactions pursuant to LR 5(g)(1)(B)
2 to minimize filing under seal.

3 30. Attached hereto as **Exhibit 16** is a true and correct copy of an ARAG business
4 record produced in this litigation as ARAG010643, consisting of an email chain between
5 ARAG employees and Microsoft employees dated April 19, 2019. This document was
6 generated in the regular course of ARAG's business and maintained on ARAG's email server.

7 31. Attached hereto as **Exhibit 17** is a true and correct copy of an ARAG business
8 record produced in this litigation as ARAG010037, consisting of an email between ARAG
9 employees and Microsoft employees dated October 13, 2021. This document was generated in
10 the regular course of ARAG's business and maintained on ARAG's email server. Exhibit 17
11 contains redactions pursuant to LR 5(g)(1)(B) to minimize filing under seal.

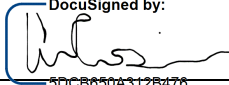
12 32. Attached hereto as **Exhibit 18** is a true and correct copy of an ARAG business
13 record produced in this litigation as ARAG010647, consisting of an email chain between
14 ARAG employees and Microsoft employees dated June 11, 2018. This document was generated
15 in the regular course of ARAG's business and maintained on ARAG's email server.

16 33. Attached hereto as **Exhibit 19** is a true and correct copy of an ARAG business
17 record produced in this litigation as ARAG010533, consisting of the Microsoft 2022 ARAG
18 Performance Standard Results. This document was generated in the regular course of ARAG's
19 business and maintained among ARAG's electronic records in the ordinary course. Exhibit 19
20 contains redactions pursuant to LR 5(g)(1)(B) to minimize filing under seal.

21 34. Attached hereto as **Exhibit 20** is a true and correct copy of an ARAG business
22 record produced in this litigation as ARAG010468, consisting of ARAG's draft answers to a
23 "Questionnaire" issued by Microsoft as part of the 2009 RFP process by which Microsoft
24 selected ARAG to provide prepaid legal services as a Microsoft employee benefit. This

1 document was generated in the regular course of ARAG's business and maintained among
2 ARAG's electronic records in the ordinary course. Exhibit 20 contains redactions pursuant to
3 LR 5(g)(1)(B) to minimize filing under seal.

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5 Dated this 6th day of March 2025, at Des Moines, Iowa.

6
7 DocuSigned by:
8 
9 _____
10 5DCB650A312B476...
11 Ann Cosimano
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CERTIFICATE OF SERVICE

Pursuant to the laws of the United States, the undersigned certifies under penalty of perjury that on the 6th day of March, 2025, the document attached hereto was served upon the below in the manner indicated:

Pro Se Plaintiff

William McNae
504 11th Place
Kirkland, WA 98033
prose.wmcnae@gmail.com

- ☐ Via CM/ECF
- ☒ Via electronic mail
- ☐ Via U.S. Mail, postage prepaid
- ☐ Via Facsimile
- ☐ Via Courier
- ☒ Via Overnight delivery

Pro Se Plaintiff

Ronda McNae
504 11th Place
Kirkland, WA 98033
prose.rmcnae@gmail.com

- ☒ Via CM/ECF
- ☒ Via electronic mail
- ☐ Via U.S. Mail, postage prepaid
- ☐ Via Facsimile
- ☐ Via Courier
- ☐ Via Overnight delivery

DATED this 6th day of March, 2025, in Columbus, OH.

By s/Michael T. Mullaly

Michael T. Mullaly